

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DANIEL JAY PEREZ,

Plaintiff,

v.

CALVIN COGBURN, et al.,

Defendant.

CASE NO. 2:18-cv-01800-JLR-BAT

**ORDER DENYING MOTIONS FOR
RECONSIDERATION, TO EXTEND
DISCOVERY, AND TO ISSUE
SUBPOENA DUCES TECUM**

In 2018, Plaintiff filed a *pro se* civil rights action under 42 U.S.C. § 1983. In January and February 2021, he filed motions for reconsideration (Dkt. 143), to issue subpoena duces tecum (Dkt. 144), and to extend the time to complete discovery (Dkt. 145).¹ For the reasons below, Plaintiff's motions (Dkts. 143, 144, 145) are DENIED.

A. Motion for Reconsideration

Plaintiff moves for reconsideration of parts of the Court's January 7, 2021, order denying his motion to compel. Dkt. 143. Specifically, he moves for reconsideration of the Court's order denying his motion with respect to Interrogatories numbers 4, 5, and 6 directed to defendant Collins, and Interrogatories numbers 8, 9, and 10, directed to defendants Anderson, Warner and

¹ Plaintiff has also filed a motion for leave to file a fourth amended complaint (Dkt. 148) which the Court will address by separate order.

Jewitt. *Id.* Plaintiff asserts he has “new evidence” that warrants reconsideration of the Court’s prior ruling.

Motions for reconsideration are disfavored under the Court’s local rules:

Motions for reconsideration are disfavored. The court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence.

Local Rules W.D. Wash. CR 7(h)(1). Such motions are an “extraordinary remedy,” and “should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (internal citation omitted).

Here, Plaintiff fails to show manifest error in the Court’s prior ruling, or new facts or legal authority that would warrant reconsideration of the Court’s order. By order dated January 7, 2021, the Court granted in part and denied in part Plaintiff’s motion to compel. Dkt. 142. With respect to defendant Collins, the Court’s order stated, in relevant part:

In Interrogatory No. 4, Plaintiff asks for the name of the person who “altered or directed the altering” of two Exhibits. Dkt. 123-1, at 57-60. In Interrogatory No. 5, Plaintiff asks for the “day and time Exhibits ‘A’ and Exhibits ‘B’ were altered identifying the computer or printer location and identification number. *Id.* In Interrogatory No. 6, Plaintiff asks defendant to “state what the reasoning was for altering Exhibit ‘A’ and Exhibit ‘B.’” *Id.* Defendants object in part on the grounds that plaintiff’s questions are based on the factual premise that a document was altered, which defendants do not concede. *Id.*

Plaintiff’s motion to compel is denied as to the form of the questions posed in Interrogatories No. 4, 5, and 6, which, as defendant points out, assume a factual premise which defendants do not concede, i.e., that documents were intentionally altered.

Id. With respect to defendants Anderson, Warner and Jewitt, the Court’s order stated, in relevant part:

Plaintiff also challenges defendants’ responses to Interrogatories 8, 9, 10, and 11. Dkt. 123, at 8-10. These interrogatories ask defendant to identify who made the

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alterations to certain documents. Dkt. 123-1, at 74-76. Defendant objected in part on the grounds that plaintiff's questions are based on the factual premise that a document was intentionally altered, which defendants do not concede. *Id.*

Plaintiff's motion to compel is denied as to the form of the questions posed in Interrogatories No. 8, 9, 10, and 11, which, as defendant points out, assume a factual premise which defendants do not concede, i.e., that documents were intentionally altered.

Id.

Plaintiff moves for reconsideration of the Court's order based upon a grievance response he received dated December 31, 2020. Dkt. 143. Plaintiff's grievance asserted that when he reviewed his medical file he did not find records that he had been provided previously, he found the record did not disclose properly who had been provided medical disclosures, and that records that had been disputed were not properly marked nor was the statement of disagreement attached to the records. Dkt. 143-1, at 2. He asserts that his medical records have been "falsified[.]" and records found within his file are not the original records. *Id.* He states he currently possesses the original records that were served to him in the legal process of involuntary antipsychotic medication hearings, but those records are not located in his medical files as of November 5, 2020. *Id.* The grievance response, dated December 31, 2020, contains the following statement, in relevant part, from Health Service Manager (HSM 1) Symon:

Mr. Perez, it does in fact appear that you were served documents that were then altered prior to being placed in the medical chart and or you were not given final copies of documents. It also appears that your appeal request was altered prior to sending it to HQ for review; which may have directly resulted in your appeal being denied. We take this seriously and this information, along with your copies and medical records copies will be forwarded to the Attorney General's (AG's) office for further review. [...]

Id. The grievance response further states that HSM 1 Symon's statement has been accepted as the facility's Level I administrative response, and is signed by Lee Stemler, CS2. *Id.*

The Court does not find that this grievance response constitutes new facts warranting reconsideration of the Court's prior order. The grievance response is not signed by nor does it

1 contain the names of any of the named defendants to whom the interrogatory questions at issue
 2 were directed. Furthermore, the Court upheld the defendants' objections to the subject
 3 interrogatories due to the form of the questions which were premised upon the assumption that
 4 the specific defendants conceded or had knowledge that the documents in question were
 5 "altered" in the first instance. Because the Plaintiff failed to ask any foundational question of
 6 defendants regarding their awareness of any alteration of the documents, the questions Plaintiff
 7 posed regarding this issue were problematic in that they assumed as fact a proposition that these
 8 specific defendants had not conceded or indicated they were aware of. The Court also notes that,
 9 with respect to plaintiff's medical records, the grievance response does not definitively find that
 10 the documents were, in fact, deliberately altered. Dkt. 143-1, at 2. Rather, the response states that
 11 it appears that the documents Plaintiff was served were either "altered prior to being placed in
 12 the medical chart and *or you were not given final copies of the documents.*" *Id.*

13 Accordingly, the Court finds that Plaintiff has failed to show manifest error in the Court's
 14 prior ruling, or new facts or legal authority that would warrant reconsideration of the Court's
 15 order. Plaintiff's motion for reconsideration (Dkt. 143) is DENIED.

16 **B. Motions for Extension of Time to Complete Discovery and to Issue Subpoena Duces**
 17 **Tecum**

18 Plaintiff moves for an extension of time to complete discovery in order to inquire further
 19 regarding the alleged alteration of his medical records in light of the grievance response
 20 described above. Dkt. 144. Plaintiff also asks the Court to issue a subpoena duces tecum with
 21 respect to non-defendant Lee Stemler (CS2) who signed the grievance response. Dkt. 145.

22 The Court notes that the original discovery deadline in this case was set for August 19,
 23 2019. In the interim Plaintiff has amended his complaint several times and been granted

1 numerous extensions of time to complete discovery in this matter. The Court acknowledges that
 2 some of the discovery delays in this case are attributable to logistical difficulties related to the
 3 COVID-19 pandemic. However, the fact remains that discovery has been in process in this case
 4 for over a year and a half and Plaintiff has been afforded substantial extensions to pursue
 5 discovery. Furthermore, on December 22, 2020, Plaintiff again requested an extension of the
 6 discovery deadline which had expired on December 20, 2020, but shortly thereafter withdrew
 7 that request.

8 On January 7, 2021, the Court extended the discovery deadline to February 8, 2021,
 9 solely with respect to very limited issues (not related to the issue in question here) raised in
 10 plaintiff's motion to compel but clearly stated that no additional discovery requests may be
 11 served. Plaintiff now seeks to reopen discovery entirely. Defendants indicate in their response to
 12 plaintiff's motion for extension of time that they have mailed out the discovery related to the
 13 remaining limited issues articulated in the Court's January 7, 2021, order.² Under the
 14 circumstances, the Court declines to re-open discovery at this time.

15 Accordingly, plaintiff's motions for extension of time to complete discovery (Dkt. 144)
 16 and to issue a subpoena duces tecum (Dkt. 145) are DENIED.

17 The Clerk shall provide a copy of this order to the parties.

18 DATED this 26th day of February, 2021.

19
 20 
 21 BRIAN A. TSUCHIDA
 United States Magistrate Judge

22 ² Defendants also indicate there are a few other "loose end" discovery disputes that the parties have
 23 conferred on and that the defendants are finalizing and will supplement to Plaintiff as needed, as soon as
 possible. Dkt. 147.